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NO. 82-1974

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

CITY OF MACON,

Petitioner

v.

C. D. JOINER, et al.,

Respondents

SUPPLEMENTAL APPENDIX

22pp

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

C.D. JOINER, on behalf of himself and others similarly situated,	:	[Filed at 8:30 A.M. on April 27, 1981]
Plaintiffs,	:	
VS.	:	CIVIL ACTION NO. 79-287-MAC
CITY OF MACON,	:	
Defendant.	:	

OWENS, District Judge:

This case is before the court on cross motions for summary judgment. The plaintiffs in the case are employees of the Macon Transit System (MTS); the defendant is the City of Macon. Plaintiffs' action is brought pursuant to the Fair Labor Standards Act (FLSA), as amended, 29 U.S.C.A. §§ 201-219 and seeks a recovery from defendant for hours worked over forty from May 1, 1976,

plus a permanent injuntion compelling defendant in the future to pay time and a half for all overtime work.

The summary judgment motions presently before the court rest on the question of whether the operation of an urban transit system by the City of Macon is an integral operation in an area of traditional governmental functions which is exempted from compliance with the Fair Labor Standards Act by the Tenth Amendment.

Facts

As to the following pertinent facts, there is no dispute.

Prior to December 31, 1972, public transit facilities in the city of Macon were operated by Bibb Transit Company, a privately-owned corporation that had a franchise from the city to operate a transit

system. On November 23, 1971, and again on August 29, 1972, Bibb Transit Company advised the city that it intended to cease operation on December 31, 1972 when its franchise was due to expire. As a result of these notices, a study was done for the city by Allen M. Voorhees and Associates, Inc. of McLean, Virginia, concerning whether or not the city should operate a publicly-owned mass transportation system within the city of Macon. The study was dated December 6, 1972.

On December 31, 1972 the Bibb Transit Company ceased operations and, for the next two weeks, the city was without transit service. On or about January 15, 1973, Bibb Transit Company resumed providing transit service in the city as it had previously done, pursuant to an agreement with the city

whereby it would be paid $25,000 to offset the operating deficit it incurred during a two-month period. This subsidy was made available to the City of Macon by the State of Georgia.

On March 6, 1973, the mayor and council of the City of Macon adopted a resolution authorizing the purchase of certain passenger-carrying vehicles, service vehicles, tools and maintenance equipment, large and small units relative thereto and office furniture from Bibb Transit Company. Possession of the property was transferred to the City on March 15, 1973 and on that date the City entered into a lease of the real estate located at 815 Riverside Drive and commenced operation of a public transit system in Macon.

The MTS operates eleven routes

routes throughout the city. The route system is basically the same as the one operated by the private company in 1972. It services approximately 8,900 people per day (the population of the city of Macon is approximately 100,000). The typical passenger is female (66%), black (89%), middle-aged (80%), low income (80%) and "transit captive," i.e., living in a household that does not have an automobile available to it (95%). Approximately 20% of the passengers are going to and from work.

Funding for the MTS is derived from fares, advertising, charters, and operational subsidies provided by the City of Macon. In addition, the city has used federal revenue sharing funds and grants from the Georgia Department of Transportation to pur-

chase capital items. For example, MTS bought ten new buses with $600,000 of federal revenue sharing funds. The City of Macon has tried to obtain federal transit funding for its system pursuant to the Urban Mass Transportation (UMTA), 49 U.S.C.A. §§ 1601 et seq., however, it has failed to comply with § 13(c) of the Act and consequently is inelegible to receive the funds available--up to 80% financing of net capital investments and up to 50% of operating expense projects. 49 U.S.C.A. § 1604. As a result, the system operates at a huge loss. As of March 31, 1980, the operating subsidy put into the system by the City of Macon since it commenced operation of the transit system was $2,627,466.00.

The MTS was established by the city as an "enterprise fund," i.e.,

an item in which the operations of the enterprise generate income which is supposed to cover a large portion of the cost for that activity. Other enterprise funds maintained by the City are for the Macon Coliseum, the Macon Auditorium and the Bowden Golf Course.

Law

The FLSA, enacted over forty years ago, has as its purpose the regulation of certain aspects of employment in interstate commerce. Primarily, the Act requires covered employers to pay their employees minimum wages plus overtime pay at increased rates for time in excess of a maximum-hour workweek. Currently, the maximum-hour workweek is forty hours per week.

The original version of the Act specifically excluded the states and

their political subdivisions from its coverage. In 1961, however, Congress began to extend the coverage of the Act to some types of public employees. This extension was continued in subsequent amendments and culminated in the 1974 amendments in which Congress extended the minimum wage and maximum hour provisions to cover almost all public employees employed by the states and their political subdivisions. 29 U.S.C.A. § 203(d)(1978).

The constitutionality of these 1974 amendments was tested in the case of National League of Cities v. Usery, 426 U.S. 833, 49 L.Ed.2d 245, 96 S.Ct. 2465 (1976). The appellants in National League of Cities (NLC) contended that when Congress sought, through the 1974 amendments, to directly regulate the activities of states as public employers it

transgressed an affirmative limitation on the exercise of its commerce power, namely the Tenth Amendment. The Supreme Court agreed, holding that to the extent the challenged amendments operated to directly displace the states' freedom to structure "integral operations in areas of traditional governmental functions, they [were] not within the authority granted Congress by Art. I, § 8, cl. 3." The Court determined that the states have a superior right to structure their own agreements with employees engaged in those functions which are essential to the states' separate and independent existence.

NLC thus provided a standard for determining whether the 1974 amendments to the FLSA can be constitutionally applied to a

given state activity. If the state activity is an "integral operation in areas of traditional governmental functions," then the FLSA will not be applicable to that operation. The Court did not, as well it could not, clearly define what is an integral operation and provide an exhaustive list of what are traditional governmental functions. Subsequent cases have therefore attempted to perform this task, thereby more clearly defining the parameters of this standard.

The Fifth Circuit, in performing this task, has found Justice Blackmum's concurring opinion in NLC to be helpful. Peel v. Florida Dept. of Transportation, 600 F.2d 1070 (5th Cir. 1979); Public Service Co. of North Carolina v. Federal Energy Regulatory Commission, 587 F.2d 716 (5th Cir. 1979).

Justice Blackmun suggested that the Court's opinion had adopted a balancing approach whereby the state and federal interests affected would be weighed, and where the federal interests affected would be weighed, and where the federal interest is demonstrably greater and state compliance essential, the federal interest would prevail.

The Fifth Circuit has not ruled definitively on whether municipal transit systems are traditional governmental functions and such a ruling is not likely. The reason for this is that any determination of traditional governmental functions must necessarily be made in the context of the specific facts before the court. The states' interest may weigh more heavily in one case than another, depending on

the particular facts involved.

The Fifth Circuit has interpreted NLC as having a narrow holding which is limited to the following circumstances: First, the undertaking must be a traditional function essential to the sovereign existence of the state. Public Service Co., supra at 721; Pearce v. City of Wichita Falls, 590 F.2d 128, 132 (5th Cir. 1979); Peel, supra at 1083. Second, the effect of the federal law must be to "directly desplace" the state function. Peel, supra at 1084; Public Service Co., supra at 721. Finally, the effect on state functions must be balanced against the weight of the federal interest and the federal interest found insufficient.

Review of the facts presently before the court shows that the

defendant has failed to meet any of these requirements. First, this transit service to fare-paying passengers is not a traditional function essential to the sovereign existence of the state. In Macon, only about 10% of the citizens use the transit system at all; private automobiles provide the overwhelming majority of transit in Macon. In addition, the MTS was established by the City of Macon as an "enterprise fund," thus expected in large part to pay its own way. The routing, scheduling and administration of the MTS continues to be almost exactly the same as was that of the private Bibb Transit operation, with economic considerations prevailing over community needs when routing decisions are necessary. In summary,

the operation of the MTS is "indistinguishable from like commercial activities of private business. It is precisely this sort of state activity that may be subject to federal regulation." Public Service Co., supra at 721.

Second, requiring defendant to comply with FLSA will not "directly displace" the state function. The large majority of transit systems in the country already provide overtime compensation for hours worked over forty, without apparent disruption. Indeed, the real impact on the MTS comes not from the wages of garage employees and bus drivers, but from the cost of fuel and insurance.

Finally, when the federal and state interests are balanced, the federal interests predominate. There

is a profound federal commitment to and involvement in transit as illustrated by the legislative history of the Urban Mass Transportation Act. Following are several of the federal interests listed in the Report of the Senate Committee on Banking and Currency on S.6, 88th Cong., 1st Sess. (1963):

(1) The continued vitality and growth of the urban areas is essential to the national welfare.

(2) Traffic congestion and inadequate urban transportation place a great burden on the national economy. Traffic jams cost the nation an estimated $5 billion a year in time and wages lost, extra fuel consumption, faster vehicle depreciation, lower downtown commercial sales, etc.

(3) Traffic congestion also adds to the cost of moving inter-

state freight through metropolitan areas, because trucks must compete for clogged street space with automobiles. (p. 12-14)

In view of the above, it cannot be said that the Macon Transit System is an integral operation in an area of traditional governmental functions which would be exempted from the requirements of the FLSA.

Severability

Additionally, defendant argues that because the overtime provisions of the FLSA have been held to be inapplicable to a number of state and local governmental employees that these provisions are therefore inapplicable to all such employees in the absence of a congressional re-enactment of a constitutionally valid amendment to the FLSA. This is not a valid argument as to the

applicability of the FLSA for several reasons. First, NLC does not entirely vitiate the 1974 amendments on minimum wage and overtime provisions. As discussed, supra, the amendments were found to be unconstitutional only to the extent that they operate to displace the states as to integral operations in areas of traditional governmental functions. In addition, the FLSA contains a severability clause: "If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby. 29 U.S.C.A. § 219 (1976).

After reviewing the pleadings, depositions and accompanying exhibits,

affidavits, and parties' memoranda, the court concludes there is no genuine issue as to any material fact and plaintiffs are entitled to judgment as a matter of law on the issue before the court.

Accordingly, plaintiff's motion for partial summary judgment on the issue of the application of the Fair Labor Standards Act to defendant is hereby GRANTED. Pursuant to Rule 56(d), Fed. R. Civ. P., this court will set a date for further proceedings on the remaining issues in this case.

SO ORDERED, this 24th day of April, 1981.

WILBUR D. OWENS, JR.
United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

C.D. JOINER, on behalf of himself and others similarly situated,	:	[Filed at 10:30 A.M. on July 6, 1981]
Plaintiffs,	:	
VS.	:	CIVIL ACTION NO. 79-287-MAC
CITY OF MACON,	:	
Defendant.	:	

ORDER AND CERTIFICATE FOR IMMEDIATE REVIEW PURSUANT TO 28 U.S.C. §1292(b)

This case is an action brought by employees of the Macon Transit System pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C.A. §§201-219. The plaintiffs seek to recover wages for overtime hours they contend are due them pursuant to the Act as well as an injunction compelling future payments for over-time work.

By order of this Court dated

April 27, 1981, the Court granted a partial summary judgment to the plaintiffs based on its reading of National League of Cities v. Ussery, 426 U.S. 833 (1976). In its order the Court concluded that the City of Macon is not exempt from the provisions of the Fair Labor Standards Act with regard to the operation of the Macon Transit System.

The defendants have requested that the court amend its order to include a Certificate of Immediate Review Pursuant to 28 U.S.C. §1292(b). They point out that in similar litigation around the country, other courts that have addressed to this issue have concluded that a local transit system is an integral government function and is therefore not subject to the provisions of the Act. See United Transportation

Union v. Long Island Railroad, Co., 634 F.2d 19 (2 Cir. 1980); Alewine v. City Council of Augusta, Georgia, 505 F.Supp. 880 (S.D.GA. 1981); Kramer v. New Castle Area Transit Authority, No: 80-1008G (W.D.Pa. June 11, 1981) (Order granting Summary Judgment); Frances v. City of Tallahassee, No: 79-446 (2d Cir. Fla. Dec. 8, 1980).

IT IS, THEREFORE, ORDERED, that this Court's order entered on April 27, 1981 is amended for the purpose of complying with 28 U.S.C. §1292(b) by the instant order.

IT IS FURTHER ORDERED, that this Court is of the opinion that its order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from this Court's ruling on the

aforementioned issue, may materially advance the ultimate termination of this litigation by resolving the question of the applicability of the Fair Labor Standards Act to a local mass transportation system.

IT IS FURTHER ORDERED, that the court is of the opinion that the interest of justice and judicial economy would be best served if this case were to be consolidated with Alewine v. City Council of Augusta, Georgia, which is now pending before the United States Court of Appeals for the Fifth Circuit (appeal docketed June 9, 1981, No. 81-7490).

So orcered at Macon, Georgia this 6th day of July, 1981.

WILBUR D. OWENS, JR.
United States
District Judge